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IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

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OVERSTOCK.COM, INC.,

Plaintiff,

vs.

FURNACE BROOK, LLC,

Defendant.

ORDER DENYING MOTION FOR  
NEW TRIAL AND FOR  
RECONSIDERATION

Case No. 2:05-CV-00679 PGC

On October 31, 2005, the court dismissed plaintiff Overstock.com's declaratory judgment action against defendant Furnace Brook, LLC, for lack of personal jurisdiction. Overstock has now moved under Rules 59(a) and 59(e) of the Federal Rules of Civil Procedure for a new trial and for reconsideration of the court's October 31 decision. Furnace Brook opposes the motion.

After carefully examining the pleadings, the court DENIES Overstock's motion (# 25). "Grounds warranting a motion to reconsider include (1) an intervening change in the controlling law, (2) new evidence previously unavailable, and (3) the need to correct clear error or prevent manifest injustice."<sup>1</sup> Overstock has not pointed to a change in the controlling law or to new,

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<sup>1</sup>*Servants of Paraclete v. Does*, 204 F.3d 1005, 1012 (10th Cir. 2000).

previously unavailable evidence. The court may therefore grant its motion only to “correct clear error or prevent manifest injustice.”

Nothing in Overstock’s supporting memorandum convinces the court that this high standard is met. The central point of Overstock’s memorandum is that this court misinterpreted *Red Wing Shoe Co. v. Hockerson-Halberstadt, Inc.*<sup>2</sup> when it held that it lacked personal jurisdiction over Furnace Brook. But the parties themselves have robustly debated *Red Wing Shoe*’s meaning. Given their staunch disagreement, the court cannot say that any error in its reasoning is demonstrably clear enough to require the court, under Rule 59(e), to change its ruling.

If Overstock truly “believes that this Court is not constrained by the decision in *Red Wing Shoe* and is not prohibited from exercising jurisdiction over Furnace Brook,”<sup>3</sup> it should transfer the arguments from its motion to reconsider into a Federal Circuit appellate brief.

SO ORDERED.

DATED this 29th day of November, 2005.

BY THE COURT:



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Paul G. Cassell  
United States District Judge

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<sup>2</sup>148 F.3d 1355 (Fed. Cir. 1998).

<sup>3</sup>Mem. in Supp. of Mot. for New Trial and for Reconsideration [Docket No. 23], *Overstock.com, Inc. v. Furnace Brook, LLC*, Case No. 2:05-CV-00679 PGC (D. Utah filed Nov. 15, 2005).